U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: [redacted] Office: Houston Date: JAN - 8 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

IN BEHALF OF APPLICANT: [redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 11, 1974, in Mexico. The applicant's father, [redacted], hereafter referred to as [redacted] was born in Mexico in November 1939 and acquired U.S. citizenship at birth through his mother, [redacted] The applicant's mother, [redacted] was born in April 1949 in Mexico and became a naturalized U.S. citizen on July 3, 1996. The applicant's parents married each other in November 1969. The applicant was lawfully admitted for permanent residence on April 8, 1981, and claims that he acquired United States citizenship at birth under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The acting district director determined that the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under section 301(g) of the Act at the time of the applicant's birth.

On appeal, counsel alleges that [redacted] lived in Mexico from his birth in 1939 until 1956, when he was 17 years of age, when he began working in the United States. The applicant further alleges that [redacted] registered with Selective Service at age 18, and moved to California in 1958, where he worked at various locations until approximately 1967 when he returned to El Paso. [redacted] continued to reside in El Paso after he married [redacted] 1969, and after the applicant was born. [redacted] states that he worked and remained in El Paso during the week and would visit his family in Juarez on weekends. Counsel states that [redacted] was never interviewed, and that all the documentation, including Rigoberto's affidavit, should have been considered collectively.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The record contains [redacted] social security earnings beginning in 1956. He earned varying amounts each year from 1956 through

1973, a period of 18 years, with the lowest amount being $116 in 1968 and the highest amount being $4622 in 1972. There is no indication in the record as to the amount of time or physical presence required to earn the stipulated yearly amounts. It is reasonable to presume that yearly listed earnings of $1054 in 1973, $1042 in 1971, $116 in 1968, $1727 in 1967, $591 in 1964, $410 in 1963 or $1813 in 1962 do not represent a full year's employment regardless of the minimum wage at the time. It is not possible to determine the amount of time actually spent in the U.S. based on these records.

As mentioned in the director's decision, [redacted] listed his address as Guatemala 720 Sur, Ciudad Juarez, Chihuahua, Mexico, on the applicant's immigrant visa application filed in 1980. He indicated that he resided there from May 1965 to April 1980. It was also noted that [redacted] selective service card, in the name [redacted] was mailed in 1957 to an address in Mexico.

Although [redacted] spent an unspecified amount of time in the United States each year for 18 years between 1956 and 1974, the exact amount of time is unsubstantiated by supporting documentation. Counsel attempted to convert [redacted] ages into today's dollars. However, the question still remains regarding the actual amount of time [redacted] was physically present in the United States, particularly when he listed addresses in Mexico as his residence, and allegedly lived with his sister and an uncle for certain periods of time.

Lastly, [redacted] as a U.S. citizen, filed immigrant visa petitions for his wife and children in April 1980. The applicant was classified as a child of a U.S. citizen and that approved visa petition was forwarded to the U.S. Consulate in Ciudad Juarez. Counselor officers carefully review such petitions and immigrant visa applications when one parent is a U.S. citizen, because the visa applicant might have a claim to U.S. citizenship and U.S. citizens are not eligible for immigrant visas. The applicant was classified as an alien child of a U.S. citizen on July 14, 1980, and was issued an immigrant visa by the U.S. Consulate in Ciudad Juarez, Mexico. Now, 18 years later in November 1998, the applicant seeks a certificate of citizenship based on the same set of facts that were present when he applied for and was issued an immigrant visa in 1981 and under the same section 301(g) of the Act.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden of establishing his father had been physically present in the United States a total of 10 years, 5 of which were after the age 14. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.